

REMARKS

Reconsideration of the application is respectfully requested in view of the foregoing amendments and following remarks.

1) The Claim Rejections under 35 U.S.C. § 102(e) in View of Degnbol Are Improper.

Previously, claims 1-24 of the present application ("the '170 application") were rejected as being unpatentable under 35 U.S.C. § 102(e) in view of International Publication No. WO 00/22860 ("Degnbol"). However, the rejections under § 102(e) in view of Degnbol are improper because Degnbol is a WIPO publication of an international application filed prior to November 29, 2000. Therefore, Applicant respectfully requests that the rejections be withdrawn.

The MPEP states that if an international application has an international filing date prior to November 29, 2000, the critical reference date for the reference is to be determined by applying the provisions of 35 U.S.C. §§ 102 and 374 prior to the AIPA amendments. [See MPEP at § 2136.03 III(C).]

The Examiner states:

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

[See Office Action of May 7, 2003 at page 2.] The Examiner quotes from the pre-AIPA version of 35 U.S.C. § 102, which states in part:

A person shall be entitled to a patent unless –

...

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent

Degnbol is not a 102(e) reference under pre-AIPA version of 35 U.S.C. § 102. Degnbol is not a patent granted on an application filed in the United States or on an international application filed under 35 U.S.C. § 371(c). Rather, Degnbol is a WIPO publication of an international

application filed prior to November 29, 2000. Specifically, Degnbol is a WIPO publication of International Application No. PCT/DK99/00548, which has an international filing date of October 12, 1999.

The MPEP confirms that a WIPO publication of an international application filed prior to November 29, 2000 cannot be considered a 102(e) reference, stating:

For U.S. application publications and WIPO publications directly resulting from international applications under PCT Article 21(2), never apply these references under 35 U.S.C. 102(e).

For these reasons, the rejections of claims 1-24 under 35 U.S.C. § 102(e) are improper and should be withdrawn.

2) Applicant Invented the Claimed Subject Matter Prior to the Publication of Degnbol.

Applicant invented the claimed subject matter prior to the publication of Degnbol. Therefore, each of the pending claims should be allowable under 35 U.S.C. § 102(a) in view of Degnbol.

Applicant conceived the subject matter claimed in the '170 application prior to the publication of the Degnbol reference. The Degnbol reference has an international publication date of April 20, 2000. A Declaration Under 37 C.F.R. § 1.131 of Jean Pierre De Vries ("the De Vries Declaration") is filed herewith. As stated in the De Vries Declaration, Applicant "conceived the subject matter claimed in the '170 application in the United States prior to April 20, 2000." [See De Vries Declaration at page 1.] Also filed herewith are Exhibits A, B and C, which are true copies of documents created by the Applicant prior to April 20, 2000. Exhibits A, B and C demonstrate ideas and concepts embodied by the claims of the '170 application. [See De Vries Declaration at page 2.] Therefore, the date of conception for the claimed subject matter precedes the publication date of the Degnbol reference.

Applicant constructively reduced the claimed subject matter to practice by filing the '170 application. The '170 application was prepared with due diligence beginning prior to the publication date of the Degnbol reference and continuing until the filing of the '170 application. A Declaration Under 37 C.F.R. § 1.131 of Stephen A. Wight ("the Wight Declaration") is filed herewith. As stated in the Wight Declaration, the '170 application was prepared "with due diligence, beginning before April 20, 2000 and continuing until the filing of the '170 application." [See Wight Declaration at page 1.]

Applicant conceived the subject matter claimed in the '170 application prior to the publication of Degnbol. Furthermore, Applicant prepared the '170 application with due diligence beginning prior to the publication date of the Degnbol reference and continuing until the filing of the '170 application. Therefore, each of the pending claims should also be allowable under 35 U.S.C. § 102(a) in view of Degnbol. [See M.P.E.P. § 2138.06.]

3) Applicant Has Added New Claims 25-33.

Applicant has added new claims 25-33. Support for the new claims can be found throughout the application. The following are examples of specific portions of the application that support the respective claims:

Dependent claim 25: page 13, lines 15-20.

Dependent claim 26: page 22, lines 24-28.

Dependent claim 27: page 15, lines 21-24.

Dependent claim 28: page 16, line 27 – page 17, line 7.

Dependent claim 29: page 14, line 7 – page 15, line 9.

Dependent claim 30: page 13, lines 6-9.

Independent claim 31: page 8, line 24 – page 9, line 27.

Dependent claim 32: page 8, lines 14-23.

Dependent claim 33: page 3, lines 23-26.

CONCLUSION

The claims in their present form should now be allowable. Such action is respectfully requested.

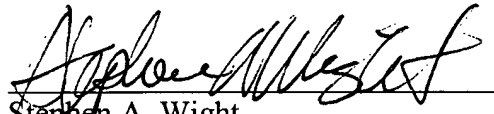
REQUEST FOR INTERVIEW

In view of the preceding remarks, Applicants believe the application to be allowable. If any issues remain, however, the Examiner is formally requested to contact the undersigned attorney at (503) 226-7391 prior to issuance of the next communication in order to arrange a telephonic interview.

This request is being submitted under MPEP § 713.01, which indicates that an interview may be arranged in advance by a written request.

Respectfully submitted,

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